

Sept. 23. 1768.

# A N S W E R S

F O R

Mess. Clay and Midgley, merchants in Liverpool, and  
George Brown Merchant in Glasgow, their Attorney;

T O T H E

PETITION of James Coulter, merchant in Glasgow, and  
others.

**T**HE petition now to be answered, reclaiming against the Lord Ordinary's interlocutors, therein fairly recited, finding the respondents preferable upon the sums confessedly due by the raisers of the multiple-pounding, under-writers in the policy of insurance, to be herein after mentioned, for payment to the respondents of the balance of their account current, with Mess. M'Kittrick and Co. merchants in Virginia; brings under your Lordships review a point of very great importance to the trade and commerce of Great Britain, with the West-India plantations, and other colonies in that part of the world; it being a notorious fact, that the returns from these plantations for goods commissioned from Great Britain, can, on most occasions, only be made in goods the produce of these colonies, upon which remittances therefor, the merchants and manufacturers in Great Britain have hitherto thought themselves safe to depend for reimbursement of the advances made by them, in answering the commissions they receive from the foreign merchants residing in these colonies; so that every attempt to shake the credit of that intercourse must be attended with most fatal consequences to the trade of the mother-country.

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It was upon this footing that the respondents (merchants in Liverpool) had any dealings with Mess. M'Kittrick and Co. merchants in Virginia, being commissioned by them to purchase, upon the respondents proper credit, on a bare commission of  $2\frac{1}{2}$  per cent, such goods of the manufacture of Great Britain, as M'Kittrick and Co. were of opinion would best answer these foreign markets; the returns to be made in tobaccos and other goods the produce of these plantations, consigned to the respondents, to be by them disposed of, and the price applied for the reimbursement of the sums advanced in purchasing the outward-cargoes.

Thus it was, that in September 1760, the respondents, in compliance with the orders they had received, purchased, and shipped on board a vessel bound from Liverpool to Virginia, a parcel of goods of the manufacture of Great Britain, commissioned by M'Kittrick and Company, to the amount of  $L. 385 : 11 : 8\frac{1}{2}$  Sterling; in return of which they received first one consignment of tobacco, to the amount of  $L. 85 : 7 : 9$  Sterling, and thereafter a second consignment, to the amount of  $£41 : 9 : 10$  Sterling; for both which sums M'Kittrick and Company have credit given in their accompt current fairly entered in the respondents books, in payment *pro tanto* of the sums advanced by them in purchasing the outward cargo: And it appears from M'Kittrick's affidavit, as in the sequel to be stated, that the like entries are stated in the books of M'Kittrick and Company, crediting the respondent for the price of the goods commissioned and sent out, and expences relative thereto, and debiting them with the price of the tobacco.

Sept. 8.  
1761. But as these two remittances fell considerably short of the sums disbursed by the respondents in purchasing the goods commissioned from them, Mess. M'Kittrick and Company, by their letter, of this date, advised the respondents of a further remittance they intended to make, of 20 hogsheads of tobacco, consigned to them *per* the ship the Two Sisters. The letter itself is in the following words: "Gentlemen, we intend to ship 20 hogsheads of tobacco in the Two Sisters, Capt. Pollard, which will be consigned you. We beg you will get that quantity insured for us, on receipt of this, at 8 guineas *per* hogshead. This you will take care to do immediately, as we don't chuse to run risks. We don't know what time he will fail; *but when he does, we will write you by him.*"

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The respondents could not consider this consignment of the 20 hogsheds to be upon any other footing, or intended for any other purpose, than the former consignments had been, *viz.* for their reimbursement of the balance still resting, and long past due, of the price of the outward-goods commissioned from, and paid by them: nor indeed is it possible to conceive, that M'Kittrick and Co. natives of this country, and having their chief correspondence at Glasgow, could have any other view in making the consignments of these goods to the respondents at Liverpool, with which place they had no intercourse, nor any other correspondence, than what they had thus settled with the respondents; so that *res ipsa loquitur*, that this remittance and consignment of the 20 hogsheds was meant and intended, as the former consignments had been, for the respondents reimbursement of the sums advanced by them in purchasing the outward-goods; as it would indeed be a most violent and unnatural presumption to suppose that it could be intended for any other purpose, and that the respondents should be at a further advance in taking care of and disposing of these tobaccos, and even to make insurance thereon, if it had not been understood that the respondents were to apply the proceeds, in the first place, in payment of the balance due to them, and of the further expences in relation to these tobaccos themselves, particularly the insurance, which the respondents, by accepting of that consignment, were bound to make, or to stand insurers themselves.

Upon receipt of this letter, the respondents finding that the insurance would be got at an easier rate at Glasgow than at Liverpool, wrote to their correspondents, Mess. Buchanan and Simpson, at Glasgow, to make insurance on the 20 hogsheds, which was accordingly done. Whether the premium of insurance has been actually paid, the respondents are not informed, nor is it of any consequence, as Mess. Buchanan and Simpson, who made the insurance, are indoubtedly liable therefor, and the respondents bound to relieve them thereof.

And as these policies of insurance are usually made out in name of the persons who apply for the same, though for the benefit and behoof of those other persons who are truly interested in the goods insured, as the same shall afterwards appear; so this policy which included fundry other goods the respondents had ordered to be insured, was made out in name of Mess. Buchanan and Simpson (the persons who had been commissioned by the respondents



spondents to make the insurance), or *whosoever it concerns*; and the under-writers, by their respective subscriptions, did insure for such sums as they were severally pleased to underwrite for.

The 20 hogsheads of tobacco, in pursuance of the aforesaid letter of advice, being accordingly, on 24th November 1761, shipped at Virginia, on board the aforesaid vessel, the Two Sisters, three several bills of loading, all of the same tenor, agreeably to the usual practice in such cases, were granted by Captain Pollard the ship-master, obliging him to deliver the tobaccos to the respondents or their assigns at the port of Liverpool; one of which being transmitted to the respondents by another vessel, came safe to hand; another of these, together with the invoice of the tobacco, inclosed in a letter from M'Kittrick and Co. was sent alongst with the tobaccos themselves. And as M'Kittrick and Company, by their letter of the 8th September 1761, had advised the respondents, that they were to write another letter alongst with the ship, which was to bring the tobaccos, it is not to be doubted, that, in said letter, accompanying the invoice and one of the bills of loading, they explicitly did advise the respondents, that these tobaccos were consigned to them for their repayment of the balance due, and of what further expences they should be at in relation to the tobaccos themselves, particularly in insuring their value, which, in conformity to their former letter, had by that time been incurred.

But as the ship with the tobacco on board was, in her homeward-passage, taken by a French privateer, the last mentioned letter, with all the other papers on board the ship, were caried off, and have not hitherto been recovered, nor probably ever will; though if said letter shall be thought anywise material, but which the respondents are hopeful will not be the case, because of the delay that would be thereby occasioned, it is not improbable that a copy thereof may be found in M'Kittrick and Company's copy-book of letters, in the hands of the trustees, for behoof of their creditors in Virginia.

And this the rather, that, from the oath emitted by M'Kittrick upon the 12th June 1765, before one of his Majesty's justices of Peace of the county of King George in Virginia, duly attested, it appears, that M'Kittrick and Co. in return of the goods commissioned by them from the respondents, did consign to the respondents the aforesaid 20 hogsheads of tobacco, with an intention that the proceeds



proceeds of said 20 hogheads, or, in case of loss, the money recovered for insurance, should be applied to their credit with the respondents ; and that by the Company's books, in the hands of the trustees to their estate, the respondents are credited with the goods received from them, and debited with these 20 hogheads of tobacco.

Besides, by a letter in process from one of the Company, as far back as 17th May 1763, he expressly says, the remittance was intended as a payment ; and adds, that the respondents had been extremely ill used in the affair, as well as the Company, who were then in entire credit.

And thus from the whole circumstances of the case it is plain, that this remittance could not be intended for any other purpose than the payment of commissioned-goods shipped by the respondents ; and it appears, as well from the entries in the respondents books, fairly and regularly kept, as in those of M'Kittrick and Co. that as the respondents are credited for the price of the goods commissioned from them, so they are debited with the three consignments above mentioned, particularly those of the 20 hogheads.

And, in pursuance thereof, the bills of loading, acknowledging the receipt of these 20 hogheads on board the aforesaid vessel, were taken in name of the respondents, deliverable to them or their assigns at Liverpool, they paying freight for the same ; and it was one of those bills of loading that was transmitted to the respondents, and is produced by them in this competition.

Upon intelligence received of the capture and condemnation of the aforesaid ship and cargo, the respondents procured and transmitted to Mess. Buchanan and Simson, their correspondents at Glasgow, a certificate of the condemnation, with such other materials as were necessary to instruct the claim against the underwriters, for payment of the sums by them insured, in which they did not apprehend to meet with any difficulty or objection: But, to their no small surprise, some of these under-writers having received intelligence of the consignment of the tobaccos by M'Kittrick and Company ; and being, or pretending to be, creditors to M'Kittrick and Company ; and willing to consider these tobaccos, and consequently the sums insured, as coming in place of the tobaccos themselves, still to remain the property of M'Kittrick and Company, notwithstanding the consignment to the respondents ; they insisted that, being debtors to M'Kittrick and Company in



the sums by them respectively insured, they were intitled to compensate the same by the sums which M'Kittrick and Company owed to them; and used arrestments in the hands of the other under-writers, as debtors to M'Kittrick and Company; and, under that pretence, refused payment of the sums by them severally underwritten.

The respondents thereupon brought an action in this Court against these underwriters, for payment of the sums by them severally insured, and they, on the other hand, brought a process of multiple-pointhing; which processes being conjoined before the Lord Hailes Ordinary, and counsel heard thereon, his Lordship pronounced the several interlocutors recited in the reclaiming petition, finding the respondents preferable, and decerning against the raisers of the multiple-pointhing, in payment *pro tanto* to the respondents of the balance of their accompt current, due by M'Kittrick and Company.

The respondents plea of preference rests upon this plain ground, arising from the facts above stated, that the tobaccos being consigned to them, as the former consignments had been for their reimbursement of the sums they were in advance upon the goods sent out; the bill of loading taken in their name, certifying the tobaccos to be deliverable to them at Liverpool; the insurance upon the tobaccos made by their order, and the premium of insurance paid, or payable by them; as they must undoubtedly have had the preferable right to these tobaccos, in case the vessel had arrived safe at the port of delivery, they must be equally preferable upon the sums insured at Glasgow, as if that insurance had been made at Liverpool; and that allowing the property of the tobaccos still to have remained with M'Kittrick and Company, they had such a *jus quæsitum*, by the consignment of the tobaccos and the bills of loading taken in their name, and insurance by them made, that it was not in the power of M'Kittrick and Company, by any posterior act or deed of theirs, to have enervated that right, without paying the balance due to the respondents; nor could the extraneous creditors of M'Kittrick and Company be in any better case than they themselves would have been.

The petitioners plead their preference upon a double ground, though both depending upon the same principles, *viz.* That notwithstanding the consignment of these tobaccos to the respondents, the property still remained with M'Kittrick and Company: That  
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if the tobaccos had perished, or suffered damage, by any accident, whether before or after they had come into the respondents possession, M'Kittrick and Company must have sustained the loss, which is inconsistent with the supposal of the property's being transferred to the respondents, *quia unaquaque res perit suo domino*: That whatever might have been the case, had the tobaccos actually come into the respondents possession, the mandate for delivery of the goods to the respondents by the bill of lading, was revocable at any time before the tobaccos were actually received by the respondents; or, that M'Kittrick and Company might, by any posterior order, have recalled the same, and appointed the delivery of the tobacco, and even the sums insured thereon, to any other person they thought proper: That the insurance stands in place of the tobacco, and must be governed by the same principles; and as M'Kittrick and Company remained proprietors of the tobacco, they must have right to the insurance; and consequently, that as the petitioners could have arrested the tobacco, if the vessel containing it had arrived in any of the ports of Scotland, so the petitioners, being debtors to M'Kittrick and Company in the sums insured, must be intitled to compensate the same with the sums due to them by M'Kittrick and Company; and the arrestments used by them in the hands of the other insurers must be equally effectual to attach the sums by them under-written, as due to M'Kittrick and Company.

The respondents do not mean to acknowledge, that the petitioners are the proper creditors of M'Kittrick and Company, or that, in consequence thereof, they can take any benefit either by compensation or by their arrestments; but as the objections to their grounds of debt will be entire, in case they shall be found to be in other respects preferable, the respondents, *pro loco et tempore*, will maintain their preference, upon supposition of the petitioners being proper creditors to M'Kittrick and Company.

That the respondents must, in all events, be preferable for the premium of the insurance, is not disputed, supposing the premium to have been paid; but whether paid or not, does not vary the argument, as the respondents, by whose orders Buchanan and Simson made that insurance, are undoubtedly liable therefor.

The petitioners set out with an observation, that the intercourse of trade between Great Britain and America is carried on upon different footings; sometimes by copartneries between merchants residing in Britain, and others residing in America, who mutually  
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consign to each other the articles of export, from the different countries ; but that more frequently the British and American merchants trade upon their own bottom, and consign the goods for which they have occasion, from the one country to the other, to their respective correspondents, to be sold by them, for the consigner's behoof ; and that, in both these cases, it is undoubted, that the consignment does not transfer the property of the goods consigned.

The respondents have no occasion to enter upon an argument, how the law would stand in either or both of the above cases, because neither of them have any resemblance to the case in hand : But if the petitioners will suppose the case, as it truly stands, *viz.* That a merchant in America commissions goods from a merchant in this country, to be sent out for the foreign merchant's proper behoof, the goods to be purchased upon the home-merchant's proper credit, and the price paid by him ; and that, for his reimbursement of the sums so advanced, he is to make remittances in goods, the produce of America, consigned to the home-merchant ; and that such consignments are accordingly made ; the respondents do not hesitate to maintain, that the home-merchant has thereby such a *jus quæsitum*, consistent with the property's still remaining with the foreign merchant, that no posterior act or deed of his can frustrate the same ; and that as supposing the goods, which by the bill of lading were deliverable to the home-merchant or to his assigns, to have come to hand, he must have been intitled to apply the proceeds of these, in the *first* place, to his own payment, the accidental capture or loss of the ship in her homeward voyage cannot operate to his prejudice, so far as regards the insurance by him made : That as he would have had the preferable right, had the ship and cargo arrived at her port of destination, he must be equally preferable upon the insurance by him procured, as the succedaneum in law of the goods themselves. His possession of the bills of lading taken in his name, is a symbolical possession of the goods themselves. The shipmaster is but the custodiar of the goods ; he holds them for the use and behoof of that person to whom, by his receipt and bills of lading, he is bound to deliver them.

The petitioner's argument, by analogy from the case as above stated, fails in this material point, in supposing, that the outward goods, in return of which these consignments were made, had  
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been upon the respondents proper account ; and that M'Kittrick and Company had been employed as factors by them, to dispose of these goods for the respondents account ; and that they, on the other hand, as foreign merchants, had consigned the tobaccos to the respondents as their factors, to be disposed of for their behoof ; whereas the fact stands directly otherwise. The respondents sent no goods, but what were commissioned by M'Kittrick and Company. These they purchased upon their own credit, and paid the price ; and, for their reimbursement, received three several consignments in tobaccos : And accordingly in their books, as well as in the books of M'Kittrick and Company, as M'Kittrick and Company are debited with the price of the outward-goods, so they have credit for the proceeds of the tobaccos.

Different persons may have different interests in one and the same subject. The property of the tobaccos did so far remain with M'Kittrick and Company, that if they had perished or suffered damage, without the respondents fault, the loss from thence arising must have lain upon M'Kittrick and Company ; and, upon the same principle, any benefit or loss, from the rise or fall of markets must have been upon their account ; but it is nowise inconsistent therewith, that the respondents should have had such an established right in these tobaccos by means of the aforesaid transaction, the consignment to them, and the bills of lading in their names, as not to be defeasable by any posterior act or deed of M'Kittrick and Company ; and, upon the same principle, they must have the same right in the insurance of these tobaccos procured by them.

This point is clear, though the respondents had been merchants residing in Glasgow, and that the tobaccos had been consigned to that port. But the present case is much stronger, where the consignment being to Liverpool, the petitioners, as creditors of M'Kittrick and Co. could neither actually nor edictally have arrested the tobaccos, though they had gone to the destined port. And if they could not attach the tobacco, as little could they attach the insurance that came in place of it. The respondents could have made the insurance at Liverpool, as well as at Glasgow. Their ordering it to be made at Glasgow was their own act and deed, and not that of M'Kittrick and Co. ; and therefore, the respondents must have the same right to the insurance they made at Glasgow, as if they had made it at Liverpool, where it would have  
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been altogether out of the petitioner's reach, as much as the tobacco would have been, had it reached Liverpool, the destined port.

It will not be disputed, that the respondents might have taken payment from the insurers, and effectually discharged them of the obligation they had come under as under-writers. This they could not have done upon any other footing, but as in right of the configuration of the tobaccos to them made, the bills of loading taken in their names, and the insurance made by their orders. From all which it is manifest, that the casual loss of the tobaccos themselves can have no influence upon the question; but, as, supposing the tobaccos to have come safe to hand, they must have been intitled to apply the same towards their own payment, they must be equally intitled so to do with respect to the insurance.

The dangerous consequences that would arise from the contrary doctrine, cannot be better illustrated, than by what every merchant in Great Britain knows to be the daily practice, *viz.* That when goods are sent abroad to be disposed of for the proper account of the person who sends them consigned to any foreign merchant, who is ordered to make insurance on them, nothing is more usual than to draw bills upon the foreign merchant to whom the goods are sent, to be replaced out of the proceeds of the goods when sold, or the insurance, in case of a loss; the property of the goods so sent remains with the home-merchant; nor was it the purpose of the consignment to transfer the property to the foreign merchant: But as upon the faith of that consignment and of the goods coming to the hands of the foreign merchant, bills are drawn upon, and accepted by him before the goods either come to hand, or are disposed of; How would it sound, if the home-merchant, after the bills thus drawn and accepted of by the foreign merchant, upon the faith of such consignment, and the bills of loading taken in name of the foreign merchant, should thereafter pretend to recal the same, and to order delivery of the goods, or the insurance, in case of a loss, to any other person, or the application of the proceeds to any other purpose? Was this to be allowed, it behoved at once to put a stop to all intercourse of trade of this nature; no merchant in this country would be in safety to answer commissions from abroad, upon the faith of consignments in return to be made to him for his reimbursement, but behoved to



to have the money impressed into his hands *per* advance, to purchase the goods commissioned.

Lord Bankton, treating of Compensation and Retention, *lib. 1. tit. 24. §. 4. No. 34.* lays down the rule in these words: " This remedy, however, is of late extended to voluntary factors of all kinds, that they may retain their constituent's effects, till they are relieved of all engagements they have come under, on their account, at or after undertaking the factory; it being presumed, that it was in the view of the security in their own hands, that they became bound; and this will even be good against all creditors, arresting or offering to point such effects, and it was so judged in the case of Provost Stark at Glasgow, November 1729."

So that allowing the respondents were here to be considered merely in the character of factors who had purchased the goods commissioned, upon the faith of their being reimbursed by the consignments to be made to them of the homeward-goods, the respondents are advised, and submit it to your Lordships, that having thus advanced their own money, the consignments actually made to them, the bills of loading taken in their name, and insurance made by them; the accidental loss of the ship and cargo cannot deprive them of that preference upon the insurance which they would have had upon the tobaccos themselves, if that disaster had not happened. Their possession of the bill of loading, on which they grafted the insurance, is the symbolical possession of the goods themselves; and as M'Kittrick and Co. could not by any posterior act or deed of theirs have recalled or enervated that consignment, their creditors cannot have a stronger right in competition with the respondents, than M'Kittrick and Co. would themselves have had.

And so this point was very recently judged by your Lordships, in the question between Mess. Greenshiels and Wardrope merchants in Glasgow, and Mess. Cross, Bogle, and others, creditors of M'Farlane, respecting a parcel of sugars which M'Farlane had sent home consigned to King, his agent, at Port Glasgow, accompanied by a letter enjoining King, after disposal of the sugars, to apply the price to the payment of particular creditors, by certain proportions. Upon the ship's arrival the sugars were arrested by certain of M'Farlane's creditors; a competition thereupon ensued between these arresters and the particular creditors, for whose payment these sugars were intended; the arresting creditors maintain-

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ed the same plea that the petitioners now do, *viz.* That there was no actual transfer of the property of the sugars, that they remained still upon his risk, and though sent home to his correspondent here with a view to their being applied to the payment of particular debts, as M'Farlane himself could have recalled that order, and directed the application to any other purpose he thought proper, and as the arrestments had been used before the sugars had been disposed of, while the property still remained with M'Farlane, they must be attachable by his creditors.

The creditors for whose payment the sugars were intended, maintained their preference upon the *jus quæsitum* they had acquired by the consignment of the goods sent home to M'Farlane's correspondent in this country, with orders to apply the price for their payment: And though it will readily occur to your Lordships how much stronger the present case is, where the tobaccos in question, without the intervention of any third party, were consigned directly to the respondents themselves, creditors to M'Kittrick and Company, in the price of the goods commissioned, in return of which these tobaccos were sent home, and the bills of lading taken in their name; yet, even in that case, your Lordships, alarmed with the dangerous consequences that would ensue to the trade and commerce of Great Britain, were such remittances to be intercepted and frustrated, either by accidents of this kind, or by arrestments by the extraneous creditors of the foreign merchant, did, with great justice, prefer these creditors, for whose behoof the remittance had been made.

The petitioners attempt to distinguish that case from the present. They say, that King was not M'Farlane's usual correspondent, and therefore must be considered to have been trustee for behoof of the creditors in the list: But this is merely *gratis dictum*; whether King had been a former correspondent of M'Farlane's did not appear, nor was it thought to be in any degree material. He was M'Farlane's correspondent or agent in that particular consignment; he received no commission, nor had any connection with M'Farlane's creditors, but was to regulate his conduct in the disposal of the sugar, and apply the price conform to the instructions received from M'Farlane himself, to whom only he was answerable.

The petitioners say further, that M'Farlane had wrote letters to the creditors in the list, notifying to them, that they were to receive  
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their payment from King: But as this fact was nowise verified, so there was plainly no relevancy in it, had it been true; because, upon supposition of the property of the sugars still remaining with M'Farlane, as being upon his risk, and consequently that he could have countermanded the orders to King, as well with respect to the disposal of the sugars as the application of the price, the consequence was unavoidable, that the intervening arrestments must have had the same effect.

But as in that case your Lordships were of opinion, that the creditors in the list had a *jus quesitum* by the consignment to King, and the orders transmitted to him after disposing of the sugars, to apply the price to the payment of particular debts, it is impossible your Lordships should be of a contrary opinion in the present case, which, in every respect, stands upon so much stronger grounds.

The petitioners have, upon their part, thought proper to quote some former decisions in the cases referred to, where the opposite principle is said to have been assumed; but as it appears to the respondents that these are nowise analogous to the case in hand, the respondents think it unnecessary to give your Lordships the trouble of any commentary upon them. The import of the whole is no other than this, that a mandate unexecuted gives no *jus quesitum* to that party for whose behoof it was intended, but may be recalled, *rebus integris*, by the party who gives the mandate; and this was the argument so strenuously maintained in the competition between the creditors of M'Farlane.

But whereas in this case M'Kittrick and Co. made the consignment to the respondents their creditors, and took the bills of lading in their name, this is most improperly characterized a *revocable mandate*: There was thereby a *jus quesitum*, to the respondents, both really and intentionally, for payment of the debt to them due. The shipmaster was the custodian of the goods deliverable to them by the bill of lading; he came under an express obligation to deliver these tobaccos to the respondents and to none other, at Liverpool, the place of their residence, and to which the ship was bound: So that in as far as the custody of the goods to the aforesaid purpose and effect did imply a trust, he was primarily trustee for the respondents. If the ship had arrived he was bound to have delivered the goods to them, and could have delivered them to none

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other, the respondents being possessed of the bill of lading, which he was intitled to get up before delivery of the goods.

The petitioners are also pleased to take exception to M'Kittrick's oath or affidavit, as posterior to their arrestments; which therefore could not be hurt by any voluntary oath of this kind; at the same time that they observe, that the respondent Midgley has in his affidavit acknowledged, that the insurance was made on the proper account and risk of M'Kittrick and Co.

But as it is plainly matter of indifference to M'Kittrick and Co. whether these tobaccos had been applied to the payment of the one debt or of the other, it is impossible to conceive what temptation Mr M'Kittrick should have had to swear falsely in this particular; besides that he appeals to his books in the hands of the trustees for his creditors, and amongst these for behoof of the petitioners, if they are truly creditors of M'Kittrick and Co. as from these it would appear, that the entries in their books of these 20 hogsheds are stated precisely in the same manner as they are in the respondents books, viz. charging M'Kittrick and Co. the price of the goods commissioned by them, and giving them credit for the tobaccos; and which is confirmed by the aforesaid letter of one of the partners, sent two years before the affidavit, and long before the bankruptcy of that company.

Nor was this anywise contradicted by the respondent Midgley's affidavit, acknowledging the insurance to be on account of M'Kittrick and Co. The fact is undeniably true, that it was ultimately for their benefit, as the loss of the tobaccos, if not insured, was to have lain upon them: But it will not surely from thence follow, that the respondents had no interest in these tobaccos consigned to them for the purpose abovementioned, the bills of lading taken in their name, the tobaccos deliverable to them, and the insurance made by them, which though done at Glasgow, must equally secure the respondents, as if they had got it done in Liverpool.

In respect of all which, and of the manifest and great importance of this question to the trade and commerce of Great Britain, it is hoped your Lordships will have no difficulty in affirming the Lord Ordinary's interlocutors, and refusing the desire of this petition.

*In respect whereof, &c.*

ALEX. LOCKHART.



